BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

1.

THE IMPORTANCE OF THE QUESTION IN THE ADMINISTRATION OF THE FAIR LABOR STANDARDS ACT.

A special and important reason why the writ should be granted in this case is in order that this court may settle a much litigated question of importance in the administration of the Fair Labor Standards Act. The question here presented is broader than the questions presented in Brooklyn Savings Bank vs. O'Neil, No. 445, and in Dize vs. Maddrix, No. 554, now before this court. Here is presented a comprehensive question, the answer to which will furnish positive guidance to the courts and the administrator in all cases. Here there was a bona fide dispute both of law and of fact, and the parties, choosing to settle rather than to litigate, made agreements of accord and satisfaction for reasonable and substantial yet arbitrary amounts. Some original plaintiffs were paid more than they could have recovered under the Act. They voluntarily dismissed their actions. Others were paid less. They repudiated their contracts and sued.

It is the uniform practice of all trial courts, so far as we are informed, to permit and approve the settlement of cases when bona fide disputes exist. Some courts indeed even suggest and encourage settlements to the points of insistence. The administrator apparently also aids in the making of compromise adjustments. See Rigopoulos vs. Kervan, 140 Fed. (2d) 506-508; 1939 Wage-Hour Division Annual Report, pages 60-61; 1940 Report pages 87-90.

See also the dissenting opinion of Judge Waller (R. 203).

It is important to the hundreds of thousands of employers and employees subject to the Act and to the courts where thousands of these cases are pending that an authoritative pronouncement be made on the question presented, in order that they may know if fair and reasonable settlements may be made where there is an honest controversy, or if every case must be litigated to a conclusion.

2.

THE LAW AND PUBLIC POLICY FAVOR SETTLEMENT OF DOUBTFUL CLAIMS

The policy of the law is to encourage settlements and to discourage parties from resorting to litigation. The courts support agreements as far as legally possible which have for their object the peaceful settlement of doubtful rights, and anything that prevents the compromise of claims encourages litigation and is contrary to public policy. C.M.&St.P. vs. Clark, 178 U.S. 353; Bofinger vs. Tuyes, 120 U.S. 198; Re: Prudence Co. 98 Fed. (2d) 559; Kehoe vs. Commissioner, 105 Fed. (2d) 552; 11 Am.Jur. 249.

> "Decisions * * * by this court * * * show beyond all doubt that parties may adjust their own controversies in their own way, and that when they do so voluntarily, and with full knowledge of their rights and all the circumstances, no appeal lies to the courts to review their mutual decision. Courts cannot make contracts for parties; and if parties understandingly contract to adjust a controversy between them in a particular way, and actually execute the contract, they are both bound to regard the controversy as at an end." (Savage vs. United States, 92 U.S. 382, 388-389).

A controversy concerning a question of law alone is sufficient. St. Louis vs. U. S., 92 U.S. 462.

Any dispute which can be the subject of an action or a suit may be the basis of a compromise and its settlement will afford a consideration therefor. 11 Am. Jur. 250.

The law and public policy favor settlements and discourage litigation to so great an extent as, on occasion, to allow the settlement of minor criminal offenses, this being considered less injurious to the public interest than litigation. 3 Wharton's Criminal Law, Sec. 1877, p. 2079; Glidewell vs. Murray, 124 Va. 563; 98 S.E. 665.

3.

THE FAIR LABOR STANDARDS ACT DOES NOT EXPRESSLY NOR BY NECESSARY IMPLICATION FORBID SETTLEMENTS

The statute not only contains no provision, forbidding settlements, but was purged of such a provision before its enactment. The section so stricken which might have indicated a Congressional intent to outlaw settlements read as follows:

> Section 20 (b). Any contract, agreement, understanding, condition, stipulation, or provision binding any person to waive compliance with any provision of this Act or with any regulation or order thereunder shall be null and void."

Senate Reporter No. 844, 75th Congress, First Session, 1937. Clearly, therefore, Congress did not intend for this statute to nullify the right to compromise claims.

Had Congress intended to restrict in any way the right to settle claims under the Fair Labor Standards Act, it would have expressly stated the restrictions, just as it did in the Longshoremen's and Harbor Worker's Compensation Act. (33

U.S.C.A. 901). Here Congress expressly enacted "No assignment, release, or commutation of compensation or benefits due or payable * * * except as provided * * * shall be valid * * * ." (33 U.S.C.A. 916). The fact that a similar provision as quoted above was stricken clearly shows the Congressional intent not to affect the existing general law.

> "The Fair Labor Standards Act contains no language outlawing a settlement contract between employer and employee where the contract is based upon a bona fide dispute between them as to the facts of the employee's claim and as to the law applicable thereto." David vs. Atlantic Company, 69 Ga. App. 643; 26 S.E. (2d) 650. See also Gangi vs. D. A. Schulte, 53 Fed. Sup. 844.

4.

PUBLIC POLICY

It is contended that controversies arising under the Fair Labor Standards Act constitute an exception to the universally recognized rule not only allowing but encouraging parties to settle their controversies. It is said that this exception exists because of public policy. Public policy, however, is nothing more nor less than the policy of the law and to determine what it is, we must go to the constitution, statutes, and the decisions of the courts. It is a question of law and not of fact. 50 Corpus Juris 857.

Statutes are not to be construed as isolated fragments of law, but as parts of a connected homogeneous system. They are not to be understood as effecting changes in the common law and rules established by judicial decision beyond that which is clearly indicated by express terms or necessary implication. They are presumed to be enacted by the Legislature with full

knowledge of the existing condition of the law, and with reference thereto, and will not be construed at variance therewith unless the intention to override such rules is clearly manifested. Ross vs. Jones, 89 U.S. (22 Wall). 576-592. Globe & Rutgers vs. Draper, (9 C.C.A.) 66 Fed. (2d) 985. Swartz vs. Inspiration Gold Mining Co., 15 Fed. Sup. 1030. Scharfeld vs. Richardson, 133 Fed. (2d) 340. 59 Corpus Juris 1038.

Congress must be presumed to have legislated with the general state of the law in mind. If it had intended to make a drastic departure from traditional legal principles, an express statement to this effect would have been made. The elimination of Section 20 (b), quoted above, is the highest evidence of the Congressional intent not to disturb the general law regarding settlements. Hecht Co. vs. Bowles, 321 U. S. 321-329. Scripps-Howard vs. Commissioner, 316 U. S. 4-13, et seq.

The right of private contract is one of the greatest liberties enjoyed by a citizen, and the most important function of courts is to maintain and enforce contracts rather than to enable parties to escape from their obligations on the pretext of public policy. 12 Am. Jur. 670.

It is the inherent and inalienable right of every man freely to deal or refuse to deal with his fellow man. Competent persons ordinarily have the utmost liberty of contracting, and their agreements voluntarily and fairly made will be held valid and enforced in the courts. 12 Am. Jur. 641.

It is inconceivable that Congress in enacting the Fair Labor Standards Act meant to repeal the equitable defense of estoppel, the common law defenses of accord and satisfaction, and of res adjudicata, and the statutory defense of limitations. Estoppel has been held a valid defense under the Fair Labor Standards Act. Mortenson v. Western Light & Telephone Co., 42 Fed. Sup.

319. Cotton vs. Weyerhauser, 147 Pac. (2d) 299. Res adjuticata is a valid defense. D. & L. Production Company vs. Cuniff, 8 L.C. 62,312.

There is no limitation in the Fair Labor Standards Act on claims arising thereunder, and yet the courts uniformly hold that the statutes of limitation of the several states apply. Loggins vs. Steel Construction Company (C.C.A. 5) 129 Fed. (2d) 118. Duncan vs. Montgomery Ward, 42 Fed. Sup. 879. Klotz vs. Ippolito, 40 Fed. Sup. 422. Abram vs. San Joaquin Cotton Oil Co., 46 Fed. Sup. 969.

All courts which have passed on the question have held that the statutes of limitation of the several states apply to claims under the Fair Labor Standards Act. These statutes are nothing more nor less than the public policy of the several states in the interest of repose to prohibit the litigation of stale demands. If, therefore, the public policy of each state is to be enforced in this respect, a fortiori, the public policy of *all* states and the Federal Government to encourage the peaceful settlement of claims by agreements of accord and satisfaction will likewise be enforced.

5.

SETTLEMENT OF CLAIMS ARISING UNDER OTHER STATUTES INVOLVING PUBLIC POLICY ARE VALID

The underlying philosophy and legal effect of the decision in this case is in conflict with the doctrine that settlement of controversies should be encouraged and is in conflict with the application of that doctrine to many statutes involving public policy.

SHERMAN ANTI-TRUST LAW

No distinction can be drawn either in the spirit, principle or

verbiage of the Fair Labor Standards Act and the Sherman Anti-Trust Law. The latter Act declares that every contract in restraint of interstate commerce is illegal, and that any person injured by reason of anything forbidden by that law "*shall recover* threefold the damages by him sustained; and the costs of suit, including a reasonable attorney's fee." (Emphasis supplied.) 15 U.S.C.A. Sections 1 to 15.

Section 6 of the Fair Labor Standards Act provides that "Every employee *shall pay* to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates * * * ."

The Anti-Trust Laws are as much affected with the public interest as is the Fair Labor Standards Act, and yet agreements of accord and satisfaction in settlement of disputed claims under the Anti-Trust Law have uniformly been held valid. Radio Corporation vs. Raytheon Co. 296 U.S. 459. Clabaugh vs. Southern Wholesale Grocers Association (C.C.A. 5) 181 Fed. 706. Westmoreland Asbestos Co., Inc., vs. Johns-Manville Corporation, 39 Fed. Sup. 117.

USURY STATUTES

Usury statutes are affected with public policy. Yet it is uniformly held that there may be an accord and satisfaction of the right of action for usury paid even though the sum advanced on such an agreement is less than the usury received, where there is a bona fide controversy between the parties. 15 C.J.S. 715. Rogers vs. Ball, 54 Ga. 15. Parker vs. Fulton Loan, 46 Ga. 166.

MERCHANT MARINE ACT

For reasons of public policy seamen are the special wards of the Courts of Admiralty, and their rights under the Merchant Marine Act are likewise affected with public policy. Yet they

may release claims for liability for personal injuries arising under the Act. Garrett vs. Moore-McCormick, 317 U.S. 239; The S. S. Standard, 103 Fed. (2d) 437.

FEDERAL EMPLOYER'S LIABILITY ACT

Settlements are uniformly recognized under the Federal Employer's Liability Act, which is a statute involving public policy. Mellon vs. Goodyear, 277 U.S. 335; Flynn vs. Railroad Co. 283 U.S. 53.

WORKMEN'S COMPENSATION ACTS

The Workmen's Compensation Acts of the several states either expressly or impliedly permit the injured employee and the employer to enter into private agreement as regards the compensation to which the employee is entitled, and such agreements are encouraged by the Courts. 71 Corpus Juris 933.

6.

BONA FIDE SETTLEMENTS UNDER THE FAIR LABOR STANDARDS ACT ARE VALID

In David vs. Atlantic Company, 69 Ga. App. 643; 26 S.E. (2d) 650, the Georgia court sustained the validity of a contract of accord and satisfaction identical with that now before the court. In Gangi vs. Schulte, 53 Fed. Sup. 844, the District Court for the Southern District of New York said: "It is my own view that there is no conflict between the public policy of the statute and the *equally well established policy of the law to encourage the amicable adjustment of disputes by arms-length negotiation.* I find nothing in the statute which prohibits the settlement of such a past due claim, especially if the amount paid in settlement is at least equal to the unpaid overtime com-

pensation." (Emphasis supplied). See also Sissel vs. Great Atlantic & Pacific Tea Company, 37 Fed. Sup. 913.

7.

CASES RELIED ON BY RESPONDENTS DISTINGUISHED

The only authorities cited in the majority opinion are: Tennessee Coal Co. vs. Muscoda Local, 321 U.S. 590; Guess vs. Montague, 140 Fed. (2d) 500; Seneca Coal & Coke Co. vs. Lofton, 136 Fed. (2d) 359; Overnight Motor Company vs. Missell, 316 U.S. 572. None of the authorities cited support the ruling made. The Tennessee Coal case involved only the question of "portal to portal" pay; the Overnight Motor case dealt only with the right to overtime of an employee working irregular hours; and in Guess vs. Montague, and the Seneca Coal case, there was no question of a bona fide controversy between the parties.

In some of the cases on which respondents rely will be found isolated comments and dicta which, taken alone, appear to give some support to their contentions, but when these cases are considered in their entirety the distinction is obvious. On careful examination, it will be found that in none of them was there a bona fide controversy of law and fact existing between the parties. Though, as petitioner contends, no Circuit Court has decided the exact question here presented, the decisions dealing with the defense of accord and satisfaction under the Fair Labor Standards Act are conflicting and confusing.

> "As to the appellants claim of accord and satisfaction, we are not now required to choose between the conflicting view of other Circuit Courts of Appeal. See Fleming vs. Warshawsky & Co. 7 Cir. 123 Fed. 2d 622; Guess vs. Montague, 4 Cir., Sept. 16, 1943, 140 Fed. 2d 500." Rigopoulos vs. Kervan, 140 Fed. 2d 506-507-8.

In Rigopoulos vs. Kervan, 47 Fed. Sup. 576, the District Court struck a plea of accord and satisfaction, stating that *no facts were pleaded to show an honest dispute between the parties, and that in the absence of such allegation, the defense of accord and satisfaction was insufficient.* On appeal, the Circuit Court in the decision reported in 140 Fed. (2d) 506 affirmed the trial court and said "There was nothing in dispute between the parties at the time the defendant made his payments; hence there was no consideration for an accord even at common law."

In Fleming vs. Warshawsky, (C.C.A. 7) 123 Fed. (2d) 622, it appears that the administrator and the defendant stipulated to enter a consent judgment enjoining the defendant from violations and providing that he should pay his employees certain amounts. The defendant company failed to comply and was cited for contempt and defended the contempt action on the ground that "without solicitation or other effort on their part, or any one authorized by them in that behalf, certain employees * * * voluntarily and without coercion relinquished their said claims." Here, then, the employees simply signed a voluntary waiver or release upon no consideration whatever and without any controversy existing.

Likewise, in Guess vs. Montague (C.C.A. 4) 140 Fed. (2d) 500, it affirmatively appears that there was no bona fide dispute. The court said (p. 505) "These plaintiffs had two claims, one for the balance of the minimum wages and overtime compensation fixed by law, the other for liquidated damages in a like amount. There was doubt in the mind of the defendant as to his liability for either and *plaintiffs were not then even claiming that he was liable for either.*" (Emphasis supplied)

In Birbalas vs. Cuneo Printing Industries, Inc. (C.C.A. 7) 140 Fed. (2d) 826, the court expressly stated that there was no evidence of an existing bona fide dispute.

CONCLUSION

That the question be answered authoritatively is important to the public. It is important to business generally and especially to that ever increasing part of the business world engaged in interstate commerce or the production of goods therefor.

It is important to the Courts and to the Administrator of the Wage-Hour Division of the Department of Labor. They should know whether they may lawfully permit honest settlements when both litigants want to settle or if they must require every disputed claim to be litigated to final judgment.

Most of all, it is important in the interest of fair and honest dealing and the public morals. Shall contracts continue to be binding or have they become only "scraps of paper"? Was it the intention of Congress "to drive so wide a breach between law and morals"? Gangi v. Schulte, supra.

All concerned — and they are many — should know the answer.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted.

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APPENDIX

Pertinent provisions of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, 29 U.S.C. Section 201, et seq.) read as follows:

"Sec. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates * * * "

"Sec. 7 (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section, * * *

unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

"Sec. 16 (b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situ-

ated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

No. 923

Office - Supreme Court, U. S.
FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ATLANTIC COMPANY,

Petitioner,

vs.

EMANUEL CARTHAN, et al.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Atlantic Company, defendant in the District